



July 19, 1999

Mr. Madison Jechow  
Associate General Counsel  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220

OR99-2008

Dear Mr. Jechow:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 126736.

The Lower Colorado River Authority (the "LCRA") received a written request for, among other things, the following information:

all documentation regarding the LCRA's discussions, meetings, agreements with the Hurst Creek Mud regarding the suspended attempt to negotiate a waste water agreement for the disposal of effluent on the golf course and medians for Hurst Creek MUD. . . . Please provide all documents that show how this step with the Hurst Creek MUD was part of a Regional Waste Water Plan to be managed by the LCRA. Please provide all documentation relating to any discussions with [Lakeway] MUD regarding a similar regional waste water plan with the LCRA.

You contend that certain documents coming within the ambit of the request are excepted from required public disclosure pursuant to sections 552.105(2) and 552.107(1) of the Government Code.

You first contend that the records you submitted to this office as "Exhibit B" are excepted from required public disclosure pursuant to section 552.105(2) of the Government Code, which excepts from required public disclosure "information relating to . . . appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property." This office has addressed the applicability of this section only in instances where a governmental body intends to acquire property for a public purpose. *See, e.g.,* Open Records Decision No. 357 (1982). "The opinions construing section [552.105], as well as the actual language of the exception, tie the provision to situations

entailing the expenditure of public funds to acquire or use the subject property for public purposes in order to prevent speculation from inflating the price.” Open Records Decision No. 590 at 4 (1991). Consequently, section 552.105 protects information the release of which would impair or tend to impair the governmental body’s “planning and negotiating position in regard to particular transactions.” Open Records Decision No. 222 (1979).

You contend that section 552.105(2) applies to most of the requested information because

LCRA intends to pursue negotiations with the Hurst Creek Municipal Utility District (“HCMUD”) to acquire wastewater collection, treatment and storage facilities from HCMUD. The provision of wastewater services is clearly a public purpose. The negotiations between LCRA and HCMUD focus not only on the acquisition price for the facilities, but also on the level of service to be offered by LCRA and the rates to be charged by LCRA.

We have reviewed the information at issue. We note that much of the requested information has been shared between the LCRA and the Hurst Creek MUD. You do not explain, nor is it apparent to this office how the release of such information would impair the LCRA’s “planning and negotiating position” with the Hurst Creek MUD. Absent other circumstances, which you have not demonstrated here, we do not believe it would serve the purpose of section 552.105(2) to withhold from the public information that has been shared between the LCRA and the Hurst Creek MUD during the course of negotiations. Consequently, all such documents must be released to the requestor. The LCRA may withhold, however, all remaining documents contained in “Exhibit B” that have not been previously provided by or to the Hurst Creek MUD.

You next contend that the documents submitted as “Exhibit C” may be withheld pursuant to section 552.107(1) of the Government Code.<sup>1</sup> Section 552.107(1) protects information coming within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney’s legal advice to the client and the client’s confidences. *Id.*

The e-mail correspondence you seek to withhold consists mostly of factual information that does not constitute a client confidence; we have marked a small portion of the penultimate paragraph that may be withheld as legal advice. We also note that the correspondence and draft agreement from Ronald J. Freeman is addressed to counsel for the Hurst Creek MUD

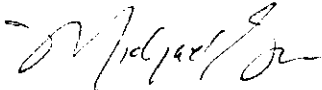
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<sup>1</sup>One of the documents you submitted as part of Exhibit C, a draft of your request for an open records decision from this office, was created after the LCRA received the open records request and therefore does not come within the ambit of the request.

and therefore constitutes neither a client confidence nor an attorney's confidential advice to his client; the correspondence and draft agreement must be released in their entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael J. Burns".

Michael J. Burns  
Assistant Attorney General  
Open Records Division

MJB/RWP/eaf

Ref.: ID# 126736

Encl. Submitted documents

cc: Ms. Christine Wilson  
6 Cloverbrook Court  
Village of the Hills, Texas 78738-1324  
(w/o enclosures)